

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL REVISION APPLICATION No. 214 of 2007****For Approval and Signature:****HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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MOTILAL GAMNAJI PATEL - Applicant(s)**Versus****STATE OF GUJARAT & 1 - Respondent(s)**

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Appearance :

MS ROOPAL R PATEL for Applicant(s) : 1,
MS MEETA PANCHAL APP for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**Date : 17/07/2007****ORAL JUDGMENT :**

1. The original complainant has preferred the present Revision Application u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 8-2-2007 passed by the learned Addl. Principal Judge, Court No.2, City Sessions Court, Ahmedabad

below Exh. 1 in Criminal Revision Application No. 50 of 2007, whereby the said revision application was partly allowed and the order passed below Exh. 44 in Criminal Case No. 1326 of 2002 by the learned Metropolitan Magistrate, Court No. 16, Ahmedabad was set aside in respect of the documents Exh.41 to 43.

2. The applicant - original complainant had filed a complainant u/s 138 of the Negotiable Instruments Act, before the Metropolitan Magistrate, Ahmedabad alleging, *inter-alia*, that an amount of Rs.1,00,000/- (Rupees One Lac only) was paid to the respondent No. 2 as loan for business by a cheque dated 20-10-2000 drawn on Nutan Nagrik Sahakari Bank Ltd., Maskati Market Branch, Ahmedabad. Thereafter, the respondent No. 2 issued nine cheques in favour of the applicant towards repayment of loan amount. But the cheques were dishonoured by the Bank with an endorsement "Fund Insufficient". Therefore, a notice u/s 138 of the Negotiable Instruments Act demanding the amount of cheques was served to the respondent No.2. Despite receipt of the notice of the respondent No.2 did not comply with the notice and gave false reply. Therefore, complaint was filed before the learned Metropolitan Magistrate, Ahmedabad against the respondent No. 2 under the provisions of the Negotiable Instruments Act. In the said

proceedings deposition of the complainant was recorded. Thereafter, the respondent No.2 gave an application Exh. 44 to recall the complainant for further cross-examination. However, the learned Metropolitan Magistrate, Ahmedabad rejected the application by order dated 19-12-2006 against which the respondent No. 2 preferred Criminal Revision Application No.50 of 2007 before the City Sessions Court, Ahmedabad.

3. The learned Addl. Principal Judge, City Sessions Court, Ahmedabad by order dated 8-2-2007 partly allowed the Revision Application and set aside the order dated 19-12-2006 passed by the learned Metropolitan Magistrate, Court No.16, Ahmedabad passed below Exh. 44 in Criminal Case No. 1326 of 2002 with respect to documents Exh.41 to 43 and therefore the applicant has filed this application challenging the said order.

4. Heard the learned advocate Ms. Roopal R. Patel for the applicant and learned A.P.P. Ms. Meeta Panchal for the respondent - State at length and in great detail. The notice of Rule is served to the opponent No. 2, but none has appeared.

5. It appears that the learned Addl. Principal

Judge, City Sessions Court, Ahmedabad, while exercising the power under Section 397 of the Code of Criminal Procedure, 1973 passed the impugned order at the admission stage without issuing notice to the applicant - original complainant on the premise that as only question of law was involved it was not necessary to issue notice to the other side.

6. It is settled proposition that one cannot be condemned without being heard. In the present case, the impugned order has adversely affected rights of the applicant. Therefore, the applicant being a party to the proceedings before the Revisional Court was required to be heard before any adverse order is passed. In my view, as the order is passed without hearing the applicant, learned Addl. Principal Judge committed error in exercising the jurisdiction vested in him. Therefore, the impugned order is required to be set aside and the matter is required to be remanded to the City Sessions Court, Ahmedabad for hearing a fresh after hearing the parties.

7. In view of above, the impugned order dated 8-2-2007 passed by the learned Addl. Principal Judge, City Sessions Court, Ahmedabad below Exh.1 in Criminal Revision Application No. 50 of 2007 is set aside and matter is remanded to the

the learned City Sessions Judge, Ahmedabad with a direction to decide the same in accordance with law after hearing the parties as expeditiously as possible. Rule made absolute to the aforesaid extent.

(Bankim N. Mehta, J.)

/JVSatwara/